

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 02-10977
)	
CHARLES W. NADOLSKI,)	Chapter 7
Debtor.)	
)	Adversary Proceeding No. 02-1247
ANDREW M. WOZNIAK and)	
DIANE E. WOZNIAK, (02-1247),)	Adversary Proceeding No. 02-1248
)	
and)	Judge Arthur I. Harris
)	
ROBERT HARGRAVE and)	
KAREN HARGRAVE (02-1248),)	ORDER
Plaintiffs,)	
)	
v.)	
)	
CHARLES W. NADOLSKI)	
dba NADOLSKI BUILDERS,)	
Defendant.)	

Before the court is the joint brief filed by plaintiffs Andrew M. Wozniak and Diane E. Wozniak (Adversary Proceeding No. 02-1247), and plaintiffs Robert Hargrave and Karen Hargrave (Adversary Proceeding No. 02-1248) (collectively, the "Plaintiffs") and response of the debtor/defendant Charles W. Nadolski (Debtor). At the initial pretrial on these proceedings the Court indicated that the complaints may have been untimely filed. The Court directed the parties to read its tentative decision *Frishkorn v. Cowley, (In re Cowley)*, Adv. Proc. No. 02-1120

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(Bankr. N.D. Ohio February 13, 2003) regarding Bankruptcy Rule 4007(c) and file briefs addressing the issue of whether the complaints were timely filed, pursuant to Bankruptcy Rule 4007(c). For the following reasons, the Court concludes that Plaintiffs' complaints were timely-filed because the Chapter 7 trustee had properly moved to extend the time for filing all such complaints before the time had expired under Bankruptcy Rule 4007(c).

The Debtor filed his chapter 7 case on February 1, 2002. Steven S. Davis was appointed as chapter 7 trustee. The notice of the bankruptcy filing was mailed to all creditors on February 13, 2002, and stated that the deadline to file a complaint objecting to discharge of the Debtor or to determine dischargeability of certain debts was May 13, 2002 (Docket No. 2).

Although there is admittedly some confusion in the Court's docket, both the record and the docket in this bankruptcy case accurately reflect that the trustee moved to extend the deadline for filing dischargeability complaints before the time had expired under Bankruptcy Rule 4007(c). On April 29, 2002, the chapter 7 trustee filed a motion requesting an extension until July 13, 2002, to file both complaints to determine dischargeability under Bankruptcy Rule 4007(c) and objections to discharge under Bankruptcy Rule 4004(b) (Docket Nos. 19 & 23).

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The motion was served on the Debtor and his counsel, and the Debtor did not file a response or objection to the motion. On May 9, 2002, the Court entered an order extending the deadline for filing an objection to discharge under Bankruptcy Rule 4004(b) (Docket No. 24); however, that order did not address the trustee's additional request, contained in the same motion, to extend the time to file complaints to determine dischargeability of debts under Bankruptcy Rule 4007(c).

Given the trustee's timely filing of a motion to extend the deadline for creditors to file dischargeability complaints before the time had expired under Bankruptcy Rule 4007(c), and given the fact that the trustee's motion was unopposed, the Court finds cause for granting the trustee's motion under Bankruptcy Rule 4007(c), making the Plaintiffs' adversary complaints timely-filed. Moreover, any question about the trustee's standing to seek such an extension on behalf of all creditors was resolved in this circuit by the Sixth Circuit's decision in *Brady v. McAllister (In re Brady)*, 101 F.3d 1165 (6th Cir. 1996). In *Brady* the Sixth Circuit held that a chapter 7 trustee is a "party in interest" under Bankruptcy Rule 4007(c) and is expressly authorized to seek extensions of time to file complaints to determine dischargeability under § 523 on behalf of the creditors of the estate. The Sixth Circuit explained its reasoning as follows:

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Depriving the trustee of standing to secure additional time for creditors to file nondischargeability complaints could undermine the efficient administration of bankruptcy proceedings. For example, some Chapter 7 cases will involve hundreds or perhaps even thousands of creditors who suspect that they have suffered from an elaborate scheme of consumer or securities fraud by the debtor. Forcing each creditor to file an individual motion for an extension of time in which to investigate the basis for a nondischargeability complaint would impose a costly, time-consuming and confusing burden upon the parties and the court. This burden is unnecessary if the trustee, a unique party with comprehensive knowledge of the case and the best ability to communicate with other interested parties, can file a single motion on behalf of all creditors. Further, allowing the trustee to request an extension of time under Rule 4007(c) will not delay bankruptcy proceedings unnecessarily because parties requesting such an extension still must demonstrate some minimally sufficient showing of cause for the extension.

101 F. 3d at 1170 - 71.

Accordingly, the trustee's request to extend the time to file complaints to determine dischargeability of debts to July 13, 2002, is granted (Docket No. 19), and the Plaintiffs' complaints filed in Adversary Proceeding Nos. 02-1247 and 02-1248 on July 12, 2002, are timely-filed under Bankruptcy Rule 4007(c). A pretrial conference shall be held in these adversary proceedings on May 20, 2003, at 1:45 p.m.

IT IS SO ORDERED.

/s/ Arthur I. Harris 04/08/2003
Arthur I. Harris
United States Bankruptcy Judge